

THE HONORABLE BARBARA J. ROTHSTEIN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARTIN LUTHER KING, JR.
COUNTY, et al.,

Plaintiffs,

vs.

SCOTT TURNER in his official capacity
as Secretary of the U.S. Department of
Housing and Urban Development, et al.,

Defendants.

No. 2:25-cv-00814-BJR

PLAINTIFFS' THIRD MOTION FOR
PRELIMINARY INJUNCTION

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	STATEMENT OF FACTS	1
A.	HUD Imposes Unlawful Conditions on All Grants, Not Only CoC.....	1
1.	HUD requires a new, anti-DEI certification for grant submissions.....	2
2.	HUD announces it will apply unlawful conditions to formula grants.....	2
3.	HUD amends its policy terms to include EOs and unlawful conditions.....	3
4.	HUD threatens disapproval and rejects plans based on the conditions.....	4
5.	HUD Plaintiffs face imminent harm	4
B.	HHS Attaches New, Unlawful Conditions to HHS Grants	5
C.	New DOT Plaintiffs Face Imminent Harm	8
III.	ARGUMENT	8
A.	Legal Standard	8
B.	Plaintiffs Are Likely to Succeed on the Merits.....	9
1.	The Grant Conditions Violate the Separation of Powers.....	9
a.)	Congress Has Not Authorized the HUD Grant Conditions.....	9
b.)	Congress Has Not Authorized the HHS Grant Conditions	11
2.	The Grant Conditions Violate the Spending Clause	13
3.	Imposing the Grant Conditions Violates the APA.....	13
C.	Plaintiffs Will Suffer Immediate and Irreparable Harm	14
D.	The Balance of Equities and Public Interest Favor Plaintiffs	15
IV.	CONCLUSION.....	15

I. INTRODUCTION

The Trump administration continues to dictate local policy by imposing unlawful conditions on ever more grant programs and local governments. Last month, this Court enjoined U.S. Department of Transportation (DOT) and U.S. Department of Housing and Urban Development (HUD) from imposing unlawful conditions on DOT grants and HUD Continuum of Care (CoC) grants. Now HUD has begun imposing the same conditions on *all* grants. DOT continues to apply the conditions, including on additional local governments. And U.S. Department of Health and Human Services (HHS) is imposing similar conditions on its grant programs. Those agencies are also beginning to attach unlawful conditions to grant applications and notices of funding opportunity (NOFOs), as well as modifications and continuations that add funding to *existing* awards, forcing recipients at every stage of the process to acquiesce in unlawful demands or forfeit participation in grant programs. Many plaintiffs need relief by *August 14* to meet a submission deadline set forth in regulation. Accordingly, an expanded plaintiff group seeks, on largely indistinguishable facts and law, a preliminary injunction (PI) extending the relief previously granted to new jurisdictions, barring HHS from applying unlawful conditions at any stage of the grant-making process, and barring HUD from doing the same as to all grant programs.¹

II. STATEMENT OF FACTS²

A. HUD Imposes Unlawful Conditions on All Grants, Not Only CoC

HUD seeks to impose the same unlawful conditions enjoined for CoC grants on *all* grants.

¹ *California v. U.S. Dep't of Transp.*, 25-cv-208-JJM-PAS (D.R.I.), *City & Cnty. of S.F. v. Trump*, 25-cv-1350-WHO (N.D. Cal.), and *Tucson v. Turner*, 25-cv-353-BGM (D. Ariz.) raise distinct claims Plaintiffs do not seek to replicate here, but may have the result of some Plaintiffs obtaining relief as to some challenged conditions.

² This Motion incorporates the defined terms in Plaintiffs' Motion for TRO, Dkt. # 5, and Second Motion for TRO and PI, Dkt. # 72. The challenged grant conditions are set forth in the Appendix to the Proposed Order Granting Plaintiffs' Third Motion for Preliminary Injunction.

1 These include block grant programs Congress established to fund essential housing and services,
 2 such as the Community Development Block Grant (CDBG) program, 42 U.S.C. §§ 5303–06; the
 3 Emergency Solutions Grant (ESG) program, which funds emergency shelters and homelessness
 4 services, *id.* §§ 11371–78; the Home Investment Partnerships (HOME) program, which supports
 5 affordable housing, *id.* §§ 12741–56; and the Housing Opportunities for Persons with AIDS
 6 (HOPWA) program, *id.* §§ 12901–12. To participate, recipients must submit consolidated/action
 7 plans by August 16 each year or forfeit funds. 24 C.F.R. §§ 91.1(b)(2), 91.2(a), 91.15(a)–(b).³

9 **1. HUD requires a new, anti-DEI certification for grant submissions**

10 In May 2025, HUD amended its Applicant and Recipient Assurances and Certifications
 11 (“HUD Certifications”)—which are required to receive HUD formula grants and to submit
 12 applications for new or continuing grants—to add a certification parroting President Trump’s anti-
 13 DEI executive orders (EOs). Amaral Decl., Ex. B. Specifically, recipients must certify they “[w]ill
 14 not use Federal funding to promote [DEI] mandates, policies, programs, or activities that violate
 15 any applicable Federal antidiscrimination laws.” *Id.* The form also states that failure “to furnish or
 16 comply with [those] civil rights assurances” may result in enforcement procedures, including grant
 17 termination and referral to DOJ. *Id.* (citing 24 C.F.R. § 1.8). Applicants sign “under penalty of
 18 perjury” below a warning about civil and criminal penalties. *Id.*

21 **2. HUD announces it will apply unlawful conditions to formula grants**

22 On June 5, 2025, Claudette Fernandez, HUD’s General Deputy Assistant Secretary for
 23 Community Planning and Development (CPD), issued a letter announcing HUD’s decision to
 24 impose on all CPD formula grants (including CDBG, ESG, HOME, and HOPWA) conditions
 25 substantially the same as the enjoined CoC Grant Conditions. Semonoff Decl., Ex. C; Dkt. # 169

27 ³ Because the 2025 deadline falls on a Saturday, Plaintiffs seek relief by Thursday, August 14.

at 12–13, 46–47. The letter states CPD “FY2025 grant agreement[s]” will “emphasize conformity with” certain “administration priorities and [EOs],” and then lists the new conditions. *Id.*

First, the recipient must “certif[y] that it does not operate any programs that violate any applicable Federal antidiscrimination laws, including Title VI of the Civil Rights Act of 1964,” and “agree[] that its compliance in all respects with all applicable Federal anti-discrimination laws is material to the U.S. Government’s payment decisions for purposes of [the FCA].” *Id.*

Second, if the recipient is a “unit of general local government,” it must agree not to use the grant funding “in a manner that by design or effect facilitates the subsidization or promotion of illegal immigration or abets policies that seek to shield illegal aliens from deportation.” *Id.*

Third, the recipient must “administer its grant in accordance with all applicable immigration restrictions and requirements, including [PRWORA’s] eligibility and verification requirements” and, unless excepted by PRWORA, use SAVE or an equivalent system. *Id.*

Fourth, the recipient must agree not to “use grant funds to promote ‘gender ideology,’ as defined in [the Gender Ideology Order, EO 14168].” *Id.*

Fifth, the recipient must agree it will “not use any grant funds to fund or promote elective abortions, as required by [the Abortion Order, EO 14182].” *Id.*

3. HUD amends its policy terms to include EOs and unlawful conditions

HUD implemented its policy of applying the unlawful conditions to all HUD grants by amending its General Administrative, National, and Departmental Policy Requirements and Terms for HUD’s Financial Assistance Programs, which provide guidance about requirements that may apply to grants. 2d Verlinich Decl., Ex. B. The terms list President Trump’s EOs among the “laws and policies that may apply,” as well as conditions similar to those this Court enjoined. *Id.* at 2.

1 **4. HUD threatens disapproval and rejects plans based on the conditions**

2 HUD also notified some Plaintiffs that their already submitted consolidated/action plans
3 violate EOs. For instance, HUD threatened disapproval because Petaluma’s plan violated the DEI,
4 Gender Ideology, and Immigration EOs by including references to “equity,” “environmental
5 justice,” “transgender or gender non-conforming,” and “undocumented individuals.” Cochran
6 Decl., Ex. B. Bellevue and King County received similar notices. Esparza Decl., Ex. A; 3d Supp.
7 Marshall Decl., Ex. B. HUD gave Petaluma *24 hours* and Bellevue and King County less than *48*
8 *hours* to remedy purported violations by scrubbing their plans of the offending language and
9 reciting “assurance statements” that mirror the CPD conditions. *Id.* King County’s plan was
10 subsequently disapproved. Holcomb Decl., Ex. A.

12 **5. HUD Plaintiffs face imminent harm**

13 With the statutory deadline for comprehensive/action plans approaching, HUD Plaintiffs⁴
14 face imminent harm from imposition of these new conditions, including to their operations and the
15 vulnerable communities they serve. HUD Plaintiffs use HUD funds to provide housing, King Decl.
16 (Bend) ¶¶ 7–10; Nachbar Decl. (CCHA) ¶ 5; home modifications for seniors and people with
17 disabilities, Walker Decl. (Pima County) ¶ 7; veterans’ housing rehabilitation, Kaminski Decl.
18 (Santa Clara) ¶ 14; food security, Lutz Decl. (Bellingham) ¶ 6; senior home rehabilitation, *id.* ¶ 14;
19 lead paint remediation, Prosser Decl. (Columbus) ¶ 10; 2d Chanecka Decl. (Tucson) ¶ 12; housing
20 repairs, Caphart Decl. (NYC) ¶ 4; crime reduction, Hardgrove Decl. (Minneapolis) ¶ 12; and small
21

22
23
24 ⁴ HUD Plaintiffs are King County, Pierce County, Snohomish County, Boston, Columbus, San
25 Francisco, Santa Clara, NYC, Bend, Cambridge, Chicago, Culver City, Minneapolis, Nashville,
26 Pasadena, Pima County, Pittsburgh, Portland, San José, Santa Monica, Tucson, King County RHA,
27 Santa Monica HA, Alameda County, Albuquerque, Baltimore, Bellevue, Bellingham, Bremerton,
Dane County, Eugene, Hennepin County, Kitsap County, Los Angeles, Milwaukee, Multnomah
County, Oakland, Petaluma, Ramsey County, Rochester, San Diego, San Mateo County, Santa
Rosa, Sonoma County, Watsonville, CCHA, and SCCDC.

business assistance, Morrissey Decl. (Portland) ¶ 7. The funds ensure families can afford and stay in safe housing that meets their needs, Tufts Decl. (Kitsap County) ¶ 12; or be rapidly rehoused, Barrett Decl. (Chicago) ¶ 8. Without HUD funds, residents will lose access to meals and other lifesaving services. Sandoval Decl. (Albuquerque) ¶ 10; Sullivan Decl. (Sonoma County) ¶ 8; Peters Decl. (Cambridge) ¶ 11; Verlinich Decl. (SMHA) ¶ 21 (about 1,500 households will be at immediate risk of homelessness). Some HUD Plaintiffs are already grappling with this uncertainty by, for example, pausing service delivery, Barbee Decl. (Pierce County) ¶¶ 6–7; Sandoval Decl. (Albuquerque) ¶¶ 5, 7; but these delays increase project costs, Whitman Decl. (SCCDC) ¶ 11.

Further, HUD continues to impose enjoined CoC Grant Conditions on New CoC Plaintiffs,⁵ who also face irreparable harm. Becker Decl. (Dane County) ¶ 16 (123 households will face financial hardship, resulting in evictions and homelessness); Mathews Decl. (Hennepin County) ¶¶ 6, 8 (delay to agreements for rapid rehousing to persons experiencing homelessness); Kotze Decl. (Ramsey County) ¶ 11 (residents will lose access to shelter, housing, and services); Davidson Decl. (San Mateo County) ¶ 18 (seniors will likely face eviction and homelessness).

B. HHS Attaches New, Unlawful Conditions to HHS Grants

Similar unlawful conditions are being attached to HHS grants, including grants from the Administration for Children and Families (ACF), Health Resources and Services Administration (HRSA), National Institutes of Health (NIH), Substance Abuse and Mental Health Services Administration (SAMHSA), and Centers for Disease Control and Prevention (CDC). These grants fund, *inter alia*, health and welfare programs, 42 U.S.C. § 603 (TANF); *id.* § 623 (Title IV-B); foster care and adoption assistance, *id.* § 670 (Title IV-E); social services, *id.* § 1397 (Title XX);

⁵ New CoC Plaintiffs are Alameda County, Albuquerque, Baltimore, Columbus, Dane County, Hennepin County, Milwaukee, Multnomah County, Oakland, Petaluma, Ramsey County, San Mateo County, and Sonoma County.

low-income primary care, *id.* 254b (Health Center Program); HIV/AIDS treatment, *id.* § 300ff (Ryan White); *id.* § 247c; and substance abuse and mental health treatment, *e.g.*, *id.* § 290ee-1.

In April 2025, HHS updated its Grants Policy Statement (“HHS GPS”) to add conditions implementing President Trump’s EOs as to new and modified awards, including “supplements to award[s] [and] competing and non-competing continuations.” Brell Vujovic Decl., Ex. B. The HHS GPS requires recipients to certify “[t]hey do not, and will not during the term of this financial assistance award, operate any programs that advance or promote DEI, DEIA, or discriminatory equity ideology in violation of Federal anti-discrimination laws” and defines those terms consistent with the EOs. *Id.* at 19. In addition, several HHS operating divisions/agencies issued requirements expressly incorporating the HHS GPS and/or adding similar conditions. *E.g.*, Braunstein Decl., Ex. A at 5 (CDC);⁶ Neal Decl., Ex. A at 2 (HRSA); Brell Vujovic Decl., Ex. A at 4 (ACF); SAMHSA FY 2025 Standard T&Cs at 2–3⁷; ACF Standard T&Cs at 7.⁸ It also appears the HHS GPS has been applied to pass-through grants. Tortoraitis Decl. ¶ 3 & Ex. A.

SAMHSA also updated its NOFO Application Guide to state that “[a]ll activities proposed in your application and budget narrative must be in alignment with the current [EOs].” Kunins Decl., Ex. A at 31. It also states that “[f]unds cannot be used to support or provide services, either directly or indirectly, to removable or illegal aliens.” *Id.*

Both HRSA and NIH issued award notices that require recipients to “compl[y] with Title IX . . . including the requirements set forth in [the Gender Ideology Order]” Neal Decl., Ex. A at 4; Sida Decl., Ex. A at 5. The recipient must agree these requirements are “material terms”

⁶ This notice incorporates the CDC General T&Cs, <https://www.cdc.gov/grants/documents/general-terms-and-conditions-non-research-awards.pdf>, which in turn incorporate the HHS GPS.

⁷ <https://www.samhsa.gov/sites/default/files/fy25-award-standard-terms-conditions.pdf>.

⁸ <https://acf.gov/sites/default/files/documents/main/ACF-GENERAL-STANDARD-TERMS-and-CONDITIONS-eff.-10.1.24-Updated-5.8.25.pdf>.

on which payments “are predicated” and that “a knowing false statement relating to Recipient’s compliance . . . may subject Recipient to liability under the [FCA] . . . and/or criminal liability.” *Id.*

Additionally, ACF issued letters warning recipients of HHS’s new anti-DEI policies. *E.g.*, Brell Vujovic Decl., Ex. C. The letters state: “The Secretary of HHS has determined that awards supporting [DEI] do not meet a public purpose to the extent they are inconsistent with [HHS’s] policy of improving the health and well-being of all Americans and may violate Federal civil rights law.” *Id.* The letters do not explain how DEI is inconsistent with those health purposes, but nevertheless “strongly encourage[]” recipients to scrub their programs—and those of “subrecipients or contractors”—of DEI initiatives or else face enforcement action. *Id.*

HHS Plaintiffs⁹ face imminent and irreparable harm from imposition of these new conditions. They use HHS funds for, among other things, HIV prevention, Leach Decl. (Baltimore) ¶ 21; Mathews Decl. (Hennepin County) ¶ 7; Philip Decl. (San Francisco) ¶ 6; meals and assistance for seniors, Shea Decl. (Boston) ¶ 7; Katko Decl. (Wilsonville) ¶ 7; Barrett Decl. (Chicago) ¶ 13; emergency medical transport, Follett Decl. (Eugene) ¶ 6; substance use disorder treatment, Khan Decl. (King County) ¶ 22; health and dental care to people experiencing homelessness, Russell Decl. (Alameda County) ¶ 8; Neary Decl. (San Francisco) ¶ 4; foster care and adoption assistance, Hansen Decl. (Santa Clara) ¶ 46; legal assistance, 3d Johns Decl. (NYC) ¶ 9; and home health visits to families with young children, Kotze Decl. (Ramsey County) ¶ 17. Loss of HHS funds will mean many of these programs will be curtailed or terminated. Khan Decl. (King County) ¶ 22. Residents will lose access to food, medical care, childcare, housing, and other critical services.

⁹ HHS Plaintiffs are Alameda County, Baltimore, Boston, Cambridge, Chicago, Columbus, Dane County, Denver, Eugene, Hennepin County, King County, Milwaukee, Minneapolis, Multnomah County, NYC, Oakland, Pacifica, Pierce County, Pima County, Ramsey County, Rochester, San Francisco, Santa Clara County, San Mateo County, Snohomish County, and Wilsonville.

1 Lillethun Decl. (Dane County) ¶ 9; Khan Decl. (King County) ¶ 30; Rhorer Decl. (San Francisco)
 2 ¶ 8; Mezquita Decl. (San Francisco) ¶ 4. Loss of funds will have serious public health
 3 consequences, such as diminished pandemic preparedness and communicable disease control,
 4 Pessoa-Brandao Decl. (Minneapolis) ¶¶ 6–7; Tortoraitis Decl. (Milwaukee) ¶ 6; and reduced STI
 5 tracking, Philip Decl. (San Francisco) ¶ 5; Chawla Decl. (San Mateo) ¶ 15.
 6

7 C. New DOT Plaintiffs Face Imminent Harm

8 DOT has continued to impose the DOT Grant Condition on New DOT Plaintiffs,¹⁰ which
 9 face imminent harm as a result. These DOT funds are used for, *inter alia*, pedestrian safety, Warren
 10 Decl. (Rochester) ¶ 7; McKenna (Cambridge) ¶¶ 6–10; bridge improvements, Mathews (Hennepin
 11 County) ¶ 5; Auch (San Diego) ¶ 9; airfield maintenance and improvements, Dranzik Decl.
 12 (Milwaukee County) ¶ 7; seismic upgrades, Miller Decl. (Bellevue) ¶ 13; zero-emission vehicles,
 13 Siques Decl. (Pasadena) ¶ 24; signal system enhancements to mitigate the impact of Key Bridge
 14 collapse, Leach Decl. (Baltimore) ¶ 22; and safety planning, Brown Decl. (PSRC) ¶ 8; Cameron
 15 Decl. (SCTA) ¶ 9. Losing DOT funding will result in service reductions, delay or cancelation of
 16 planned improvement projects, and disruption of operational and fiscal planning. Fridriksson Decl.
 17 (Bremerton) ¶ 13; Dranzik Decl. (Milwaukee County) ¶ 4; Woodhouse Decl. (Pacifica) ¶ 9; Nutt
 18 Decl. (Santa Rosa) ¶ 6; Piedra Decl. (Rohnert Park) ¶ 13; Duran Decl. (Watsonville) ¶ 13.
 19

20 III. ARGUMENT

21 A. Legal Standard

22 A PI is warranted if the moving party establishes (1) likely success on the merits; (2) likely
 23

24
 25 ¹⁰ New DOT Plaintiffs are Alameda County, Albuquerque, Baltimore, Bellevue, Bellingham,
 26 Bremerton, Cambridge, Dane County, Eugene, Healdsburg, Hennepin County, Kitsap County, Los
 27 Angeles, Milwaukee, Milwaukee County, Multnomah County, Oakland, Pacifica, Pasadena,
 Petaluma, PSRC, Ramsey County, Rochester, Rohnert Park, San Diego, San Mateo County, Santa
 Rosa, SCTA, and Watsonville.

1 irreparable harm absent preliminary relief; (3) the balance of equities tips in their favor; and (4) an
 2 injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

3 **B. Plaintiffs Are Likely to Succeed on the Merits**

4 The Court's PI order found plaintiffs likely to succeed on their APA claims that the CoC
 5 and DOT Grant Conditions violate separation of powers, are not authorized by statute, and are
 6 arbitrary and capricious. Dkt. # 169. For the same reasons as well as those set forth in the prior
 7 TRO and PI briefing, New CoC and DOT Plaintiffs are equally likely to succeed. Dkt. ## 5, 44,
 8 58, 72, 158, 169. And for all those reasons and as further explained below, Plaintiffs are likely to
 9 succeed in showing the non-CoC HUD and HHS Grant Conditions are unlawful.
 10

11 **1. The Grant Conditions Violate the Separation of Powers**

12 ***a.) Congress Has Not Authorized the HUD Grant Conditions***

13 As this Court recognized, "unless and until Congress confers power upon" them, agencies
 14 have "literally . . . no power to act." *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374
 15 (1986). Just as the CoC statute did not give HUD the power to impose the enjoined grant
 16 conditions, the statutes underlying HUD's remaining grant programs do not either.
 17

18 The President lacks "his own constitutional powers" to add new conditions to federal
 19 funding. *City & Cnty. of S.F. v. Trump*, 897 F.3d 1225, 1234 (9th Cir. 2018) (citation omitted).
 20 Yet, as stated in the Fernandez Letter, that is exactly what HUD attempts to do: condition
 21 appropriated funds on compliance with the President's policy agenda. Neither Congress's annual
 22 appropriations nor the grants' authorizing statutes allow conditions that prohibit DEI or promotion
 23 of "gender ideology" or "elective abortion" or require participation in federal immigration
 24 enforcement, immigration status verification, or adherence to EOs unrelated to the grant's purpose.
 25 *See, e.g.*, Consolidated Appropriations Act, 2024, Pub. L. 118-42, 138 Stat. 358–61, 362 (CDBG,
 26
 27

1 HOPWA, HOME, and ESG programs); 42 U.S.C. §§ 5304(a)(3), (b), 5d305 (CDBG eligible
 2 activities and certification requirements); 42 U.S.C. § 12903(d)(1)–(6) (HOPWA application
 3 requirements). For example, Congress set forth detailed eligibility requirements for affordable
 4 housing funds under the HOME program. 42 U.S.C. § 12746. Congress directed the HUD
 5 Secretary to establish rules that “*only* provide for” those enumerated requirements, leaving no
 6 discretion to condition funding on unlisted criteria. *Id.* (emphasis added). Similarly, Congress
 7 required ESG recipients to certify compliance with specific homelessness-related criteria. 42
 8 U.S.C. § 11375(c). Absent an express delegation by Congress, the President’s power to impose
 9 conditions on grants “is at its lowest ebb.” *City & Cnty. of S.F.*, 897 F.3d at 1233 (citation omitted).

11 In the case of HUD grant programs, the President’s power to impose conditions is further
 12 constrained. Not only did Congress not authorize the challenged conditions, it affirmatively
 13 proscribed HUD from conditioning funds based on a jurisdiction’s otherwise lawful public
 14 policies: “the Secretary shall not establish any criteria for allocating or denying” funds “based on
 15 the adoption, continuation, or discontinuation by a jurisdiction of any public policy, regulation, or
 16 law that is (1) adopted, continued, or discontinued in accordance with the jurisdiction’s duly
 17 established authority, and (2) not in violation of any Federal law.” 42 U.S.C. § 12711. In other
 18 words, “HUD may not . . . condition funding on changes to local policies.” *Cnty. of Westchester*
 19 *v. U.S. Dep’t of Housing and Urban Dev.*, 802 F.3d 413, 433 (2d Cir. 2015) (emphasis omitted).

21 HUD is violating this statutory constraint by applying the HUD Grant Conditions to HUD
 22 Plaintiffs regardless of whether they have conflicting policies “adopted . . . in accordance with the
 23 jurisdiction’s duly established authority.” 42 U.S.C. § 12711. To the extent the conditions purport
 24 to prohibit local policies that violate federal law, courts have rejected the administration’s broad
 25 and novel re-interpretation of the law. *See, e.g., Diemert v. City of Seattle*, No. 2:22-cv-1640, 2025

1 WL 446753, at *17–18 (W.D. Wash. Feb. 10, 2025) (affinity groups “open to any City employee”
 2 did not violate equal protection). The HUD Grant Conditions are therefore “incompatible with the
 3 expressed . . . will of Congress” to prohibit HUD from conditioning grants on local policy changes.
 4 *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 637 (1952) (Jackson, J., concurring).
 5

6 The HUD Grant Conditions also conflict with provisions authorizing HUD grant programs.
 7 For instance, Congress required the HUD Secretary to set aside funds appropriated for the CDBG
 8 program for “[s]pecial purpose grants,” including grants to “historically Black colleges.” 42 U.S.C.
 9 § 5307(b)(2); *see also id.* § 5307(c) (requiring CDBG funds be allocated to “providing assistance
 10 to economically disadvantaged and minority students”). In authorizing the HOME and HOPWA
 11 programs, Congress acted to “improve housing opportunities for all residents of the United States,
 12 particularly members of disadvantaged minorities, on a nondiscriminatory basis.” 42 U.S.C.
 13 § 12702(3). Far from barring diversity-related “inclusion,” Congress *requires* HOME recipients
 14 “to establish and oversee a minority outreach program . . . to ensure the inclusion, to the maximum
 15 extent possible, of minorities and women, and entities owned by minorities and women . . . in all
 16 contracts[] entered into by the participating jurisdiction.” 42 U.S.C. § 12831(a).
 17

18 ***b.) Congress Has Not Authorized the HHS Grant Conditions***

19 Congress has also not authorized the HHS Grant Conditions, much less done so
 20 “unambiguously,” as required to sustain those conditions. *Arlington Cent. Sch. Dist. Bd. of Educ.*
 21 *v. Murphy*, 548 U.S. 291, 296 (2006). Plaintiffs are not aware of, and HHS has not identified, any
 22 instance of Congress authorizing conditions on HHS grants related to a prohibition on DEI,
 23 exclusion of transgender people, denying services to immigrants, or adherence to EOs unrelated
 24 to the grant’s purpose, whether in congressional appropriations or in the grants’ authorizing
 25 statutes. *See, e.g.*, Dkt. 184 ¶ 474 (compiling appropriation statutes); 42 U.S.C. § 608 (TANF block
 26
 27

1 grant requirements); 42 U.S.C. § 672 (Title IV-E Foster Care application requirements); 42 U.S.C.
2 § 290ee-1 (SAMHSA application criteria and allowable uses). Here, HHS has sought to impose
3 the challenged conditions pursuant only to EOs, without any statutory basis.

4 To the extent HHS has cited statutory authority, the authority is inapposite. HRSA and
5 NIH, for instance, purport to impose the Gender Ideology Order under the guise of compliance
6 with Title IX of the Education Amendments Act of 1972, which prohibits sex discrimination by
7 federal education funding recipients. Neal Decl., Ex. A at 4; Sida Decl., Ex. A at 5. But the Gender
8 Ideology Order—like all EOs—does not, and indeed cannot, impose requirements on grant
9 recipients. Tacking it onto general T&Cs does not change this. To the extent HHS and NIH purport
10 to impose new substantive conditions, nothing in Title IX authorizes them to condition federal
11 grants on a recipient ceasing “promotion” of “gender ideology,” which lacks any intelligible
12 definition and which no court has held constitutes discrimination under Title IX. To the contrary,
13 multiple courts of appeals have held Title IX *forbids* discrimination based on transgender status.
14 *See Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 616–17 (4th Cir. 2020) (transgender
15 student’s exclusion from bathroom constituted Title IX discrimination); *A.C. by M.C. v. Metro.*
16 *Sch. Dist. of Martinsville*, 75 F.4th 760, 769 (7th Cir. 2023) (“[D]iscrimination against transgender
17 persons is sex discrimination for Title IX purposes . . .”). Even conflicting court decisions do not
18 support construing Title IX to *prohibit* inclusion of transgender individuals. *See Adams ex rel.*
19 *Kasper v. Sch. Bd. of St. Johns Cnty.*, 57 F.4th 791, 812–15 (11th Cir. 2022) (en banc).

20 The Executive Branch has no independent authority to impose conditions on
21 congressionally authorized spending. *City & Cnty. of S.F.*, 897 F.3d at 1231–32. Like HUD and
22 DOT, HHS imposed conditions on its grant programs without congressional approval. These
23 conditions violate the separation of powers and must be enjoined.

2. The Grant Conditions Violate the Spending Clause

For the reasons stated in Plaintiffs’ TRO and PI briefing, HHS and HUD attempt to exercise the spending power in ways even Congress cannot. Dkt. # 72 at 10–12; Dkt. # 5 at 19. To recap, the new conditions fail the requirement that grant conditions be unambiguous because they impose hopelessly vague obligations, reinterpret nondiscrimination law contrary to the law as interpreted by courts, and confusingly require recipients to comply with EOs that may only direct the activities of federal agencies. Dkt. # 72 at 10; Dkt. # 5 at 19–22 (describing the conditions’ vagueness). The conditions are also not germane to any of the purposes of any program. Dkt. # 72 at 10–11; Dkt. # 5 at 19. Finally, by conditioning *all* HHS and HUD funds on compliance with the administration’s policy agenda, the HHS and HUD Grant Conditions are so coercive as to “pass the point at which pressure turns to compulsion.” Dkt. # 72 at 11 (quoting *S. Dakota v. Dole*, 483 U.S. 203, 211 (1987)). And the threat of treble damages from an FCA action could be catastrophic to local governments, given the significance of these federal funds to local budgets. *See* Hansen Decl. (Santa Clara) ¶¶ 5–6; Murell Decl. (San Francisco) ¶ 3 & Ex. A.

3. Imposing the Grant Conditions Violates the APA

The HUD and HHS Grant Conditions are reviewable “final agency actions” that must be set aside as “arbitrary” and “capricious,” “not in accordance with law,” “contrary to constitutional right,” “in excess of statutory jurisdiction,” and “without observance of procedure required by law.” 5 U.S.C. § 706(2). Like the CoC and DOT Grant Conditions, the HUD and HHS Grant Conditions do not derive from congressionally delegated authority. Dkt. # 5 at 22–26; Dkt. # 72 at 13–15. These conditions are also arbitrary and capricious. *Id.*

HUD has offered no explanation for the Grant Conditions beyond “rote incorporation of [EOs],” which this Court correctly held is insufficient. Dkt. # 169 at 38. HUD’s only new statement

1 is the Fernandez Letter, which simply announces that “FY2025 grant agreement[s]” will
 2 “emphasize” various “Administration priorities and [EOs].” Semonoff Decl., Ex. C at 2. This bald
 3 pronouncement of HUD’s new policy fails to demonstrate “reasoned” decisionmaking, much less
 4 that the conditions are “reasonably explained.” *Ohio v. EPA*, 603 U.S. 279, 293–94 (2024) (citation
 5 omitted). Indeed, HUD’s reliance on this letter circumvents its own regulations mandating notice-
 6 and-comment rulemaking when it imposes binding obligations. Dkt. # 5 at 25–26 (citing 24 C.F.R.
 7 § 10.1). HUD also violated its CDBG regulations, which provide “HUD *will* approve a grant if the
 8 jurisdiction’s” CDBG submissions “have been made and approved in accordance with 24 CFR
 9 part 91, and the certifications required therein are satisfactory to the Secretary.” 24 C.F.R.
 10 § 570.304(a) (emphasis added). Imposing additional conditions violates this regulation.

12 Similarly, HHS has offered practically no explanation for the HHS Grant Conditions. At
 13 most, some HHS divisions/agencies have issued post-hoc letters stating simply: “The Secretary of
 14 HHS has determined that awards supporting [DEI] do not meet a public purpose to the extent they
 15 are inconsistent with the Department’s policy of improving the health and well-being of all
 16 Americans and may violate Federal civil rights law.” Brell Vujovic Decl., Ex. C (ACF letter). Such
 17 “post hoc rationalization[.]” is insufficient. *Lotus Vaping Techs., LLC v. U.S. Food & Drug Admin.*,
 18 73 F.4th 657, 668 (9th Cir. 2023). Further, these letters fail to acknowledge HHS’s departure from
 19 court decisions contradicting its anti-DEI view of nondiscrimination law, *see* Dkt. # 5 at 25 (citing
 20 cases), or explain *how* DEI policies are inconsistent with improving health and well-being.

23 **C. Plaintiffs Will Suffer Immediate and Irreparable Harm**

24 Without preliminary relief, Plaintiffs face irreparable harm from losing access to critical
 25 funds. Such loss would destabilize immediate and future budgets, Cornell Decl. (Pittsburgh) ¶ 16;
 26 Wong Decl. (Pasadena) ¶ 14; force reductions in workforce, 2d King Decl. (Bend) ¶ 10; Khan
 27

Decl. (King County) ¶ 31; Pessoa-Brandao Decl. (Minneapolis) ¶ 7; and divert resources from other public services, Atendido Decl. (Alameda County) ¶ 8. Plaintiffs may reduce housing and homelessness services, transportation infrastructure improvements, health care services, and other programs that support their residents' health, safety, and well-being. *See supra* Sect. II.A.5 & II.B.

Moreover, lack of future funding certainty is causing harm now, including where Plaintiffs are facing structural budget deficits and are deeply reliant on federal funds, 2d Nachbar Decl. (Culver City) ¶ 7; McGowan Decl. (Denver) ¶ 16; or where Plaintiffs have to make choices now to terminate programs or to pay for them from local funds without knowing if the federal government will reimburse, Shea Decl. (Boston) ¶ 9; Lillethun Decl. (Dane County) ¶ 8. The ongoing uncertainty surrounding future funding presently harms Plaintiffs' ability to do capital planning, execute contracts, and retain qualified staff, Stephens Decl. (Eugene) ¶ 15; Johnson Decl. (Oakland) ¶ 21; and undermines long-term funding plans, Chavez Decl. (Los Angeles) ¶ 35.

D. The Balance of Equities and Public Interest Favor Plaintiffs

For the reasons stated in the Court's PI order and Plaintiffs' TRO and PI motions, the equities and public interest tip decisively in Plaintiffs' favor. Dkt. # 169 at 45.

IV. CONCLUSION

Defendants' efforts to dictate local policy through grant conditions not authorized by Congress violate separation of powers principles, exceed Congress's spending power, and violate limits on agency action under the APA. Plaintiffs face imminent harms with impending statutory deadlines. Accordingly, Plaintiffs seek a PI by August 14, 2025, extending the relief previously granted to new Plaintiffs and further barring HHS and HUD from imposing the unlawful conditions on *any* grant anywhere in the grant-making process.

DATED this 14th day of July, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that on July 14, 2025, I served a true and correct copy of the foregoing document on the following parties by the method(s) indicated below:

Brian C. Kipnis	<input checked="" type="checkbox"/> CM/ECF E-service
Annalisa L. Cravens	<input type="checkbox"/> Email
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I declare under penalty of perjury under the laws of the United States and the State of Washington that the foregoing is true and correct.

DATED this 14th day of July, 2025.

/s/ Gabriela DeGregorio

Gabriela DeGregorio
Litigation Assistant
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